

REMARKS

Introduction

The specification has been amended to correct minor and inadvertent typographical errors. Claims 1, 3, 4, 9, 12, 13, 15, 23, and 24 have been cancelled. Claims 2, 5-7, 10, 11, 14, 16, 18-21, 25, and 26 have been amended. Claims 8, 17, and 22 are also in the case. No new matter has been added by the amendments to the specification and claims. Applicant reserves the right to claim any lost subject matter in a continuation or divisional application.

Claims 2, 7, 10, 11, 14, 16-21, and 26 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Fritsch et al. U.S. Patent Application Publication No. 2002/0023038 (hereinafter "Fritsch") in view of Rabenold et al. U.S. Patent 6,813,612 (hereinafter "Rabenold").

Claims 5, 6, 8, 22, and 25 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Fritsch in view of Rabenold and further in view of Alaia et al. U.S. Patent 6,230,147 (hereinafter "Alaia").

Reconsideration and allowance of this application in light of the following remarks is hereby respectfully requested.

The Rejections Based on 35 U.S.C. § 103

Fritsch in view of Rabenold and Alaia

The Examiner rejected claims 5, 6, 8, 22, and 25 under 35 U.S.C. § 103(a) as being unpatentable over Fritsch in view of Rabenold and further in view of Alaia. Applicant respectfully traverses.

Applicant has amended each of claims 5 and 25 to be in independent form. As defined by each of applicant's independent claims 5 and 25, conducting an online auction comprises inducing bidders to place a bid by selecting from a plurality of predetermined bid increments and, upon occurrence of a revision event, revising said predetermined bid increments, wherein said

revision event comprises the detection of a preprogrammed condition by a web site system, and "wherein said preprogrammed condition is related to the passage of time between placement of bids." As described on page 21, lines 1-3 of applicant's specification, for example, "the failure to receive a bid within a certain period of time might be the 'revision event' which triggers a revision of the predetermined bid increments."

On page 7, lines 5-10 of the Office Action, the Examiner contends that "Fritsch does not specifically disclose consideration of time in adjusting bid increments. Alaia discloses consideration of time in a bidding process," and that it would have been obvious to one of ordinary skill in the art at the time the invention was made "to modify Fritsch with consideration of timing as disclosed by Alaia to modify bid increments because this would allow auctioneers to improve bid prices by using gradually smaller, more palatable price increases. See particularly Alaia at Col. 6, lines 62-67." The Examiner repeats this contention in an August 16, 2005 Advisory Action. However, applicant respectfully disagrees and submits that Fritsch, Rabenold, and Alaia, either independently or in combination, do not show or suggest each and every element of applicant's amended independent claim 5 or 25.

Particularly, nowhere does Alaia show or suggest revising bid increments "based upon the passage of time between placement of bids," as required by each of applicant's claims 5 and 25. Instead, Alaia merely discloses the consideration of time in the bidding process by automatically extending the length of an auction if a bid is received within a certain amount of time before an auction's originally scheduled closing time (see, e.g., Alaia, column 7, lines 1-5). Put another way, Alaia only discloses extending the bidding time due to the existence of a bid during a certain time period, and nowhere does Alaia show or suggest modifying bid increments due to the

existence of a certain "passage of time between placement of bids," as required by each of applicant's amended independent claims 5 and 25.

Therefore, applicant respectfully submits that Fritsch in view of Rabenold and Alaia neither shows nor suggests "revising" predetermined bid increments upon the detection of a preprogrammed condition that is "related to the passage of time between placement of bids," as required by each of applicant's claims 5 and 25. Therefore, applicant respectfully submits that Fritsch in view of Rabenold and Alaia neither shows nor suggests each and every element of applicant's claim 5 or claim 25, and, therefore, does not make obvious applicant's claim 5 or claim 25.

In an August 16, 2005 Advisory Action, the Examiner states that "

Thus, for at least the above reasons, each of applicant's independent claims 5 and 25 is allowable over Fritsch in view of Rabenold and Alaia. Applicant respectfully requests, therefore, that the rejection under 35 U.S.C. § 103(a) of each of applicant's claims 5 and 25, and any claims dependent therefrom, including claims 6, 8, and 22, be withdrawn.

Fritsch in view of Rabenold

The Examiner rejected claims 2, 7, 10, 11, 14, 16-21, and 26 under 35 U.S.C. § 103(a) as being unpatentable over Fritsch in view of Rabenold.

Applicant has amended each of claims 2, 7, 10, 11, and 14 to depend from amended claim 5. As applicant has pointed out above, amended independent claim 5 is patentable over Fritsch in view of Rabenold and Alaia. For at least the foregoing reasons, each of claims 2, 7, 10, 11, and 14, each of which now depends from claim 5, is patentable over Fritsch in view of Rabenold. Applicant has amended each of claims 16, 18-21, and 26 to depend from amended claim 5. As applicant has

Application No. 09/695,551  
Amendment dated October 21, 2005  
Reply to Office Action of April 21, 2005

pointed out above, amended independent claim 5 is patentable over Fritsch in view of Rabenold and Alaia. For at least the foregoing reasons, each of claims 16-21 and 26, each of which now depends from claim 5, is patentable over Fritsch in view of Rabenold.

Conclusion

The foregoing demonstrates that claims 2, 5-8, 10, 11, 14, 16-22, 25, and 26 are allowable. This application is therefore in condition for allowance. Reconsideration and allowance are accordingly respectfully requested.

Respectfully submitted,



---

Jeffrey C. Aldridge  
Registration No. 51,390  
Agent for Applicant  
FISH & NEAVE IP GROUP  
ROPES & GRAY LLP  
Customer No. 1473  
1251 Avenue of the Americas  
New York, NY 10020-1105  
Tel.: (212) 596-9000  
Fax: (212) 596-9090